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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/709,649	05/19/2004	Jana Rosenblatt	102241-0005	3648
21125 7590 03/06/2007 NUTTER MCCLENNEN & FISH LLP WORLD TRADE CENTER WEST 155 SEAPORT BOULEVARD BOSTON, MA 02210-2604			EXAMINER DOAN, ROBYN KIEU	
			ART UNIT 3732	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		03/06/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/709,649

Applicant(s)

ROSENBLATT, JANA

Examiner

Robyn Doan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 December 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,5-13 and 15-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,5-13 and 15-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 5-8, 10-13 and 15-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kokuni (Japanese Pat. # 09028458A) in view of Chateau (U.S. Pat. # 3,718,145) and Boll et al (U.S. Pat. # 2,043,230).

With regard to claim 1, Kokuni discloses a template for applying simulated eyebrows to a person's face (figs. 1-2) comprising a sheet of material (2) having a shape adapted to be disposed on a portion of a person's face and including upper, lower edges, right and left side edges (see attachment A), a cutout portion formed at a substantial midpoint of the lower edge and having a shape adapted to be positioned around a substantial portion of a person's nose (see attachment A). Kokuni further discloses a right eye hole (3) formed between the right edge and a substantial midpoint of the sheet, a left eye hole (3) formed between the left edge and a substantial midpoint of the sheet, a right eyebrow slot (4) formed above the right eye hole and below the upper edge, a left eyebrow slot (4) forming above the left eye hole and below the upper edge (see fig. 1). The right and left eyebrows slots having a desired shape of an

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eyebrow area to be simulated on a person's face (fig. 2). Kokuni fails to show a vertical line extending from the upper edge to the cutout portion at a substantially midpoint of the sheet, a horizontal line extending from the right eyebrow slot to the left eyebrow slot. Chateau discloses an eyebrow template (12, fig. 1) comprising markings (19 "fleur-de-lis") being in a midpoint of the template. It is noted that fig. 1 shows "fleur-de lis" comprises four leaves, two of which lying on a horizontal direction which defines as a first marking extending from the upper edge of the template to the cutout portion at 18 at a substantially midpoint of the sheet and the other two leaves lying on a vertical direction which defines a second marking extending from the left side of the eyebrow slot to the right side of the eyebrow slot. Boll et al discloses a facial measuring device (figs. 1 and 2) comprising a vertical line (at 150, fig. 2) and a horizontal line (at 156) defining a cross hair as a known way to align the facial features. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the markings as taught by Chateau into the eyebrow template of Kokuni for the purpose of centering the template to facilitate symmetrical application of the eyebrow makeup. It would also have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the cross hair lines as taught by Boll et al into the template of Kokuni in view of Chateau in order to facilitate in centering the lines. In regard to claim 5, Kokuni shows the right and left eyebrow slots each having inner portion (see attachment B) that extends in an upward direction and an outer portion (see attachment B) that extends in a downward direction. In regard to claim 5, Kokuni shows the right and left eyebrow slots each having inner portion (see attachment B) that

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extends in an upward direction and an outer portion (see attachment B) that extends in a downward direction. In regard to claims 11 and 12, Kukuni in view of Boll et al fail to the sheet of the material being made of flexible material, semi-rigid and being pre-shaped to conform to a portion of a wearer. Chateau discloses the template being made of flexible material (col. 2, lines 61-62). It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the flexible material as taught by Chateau into the template of Kukuni in view of Boll et al in order to conform to a portion of the wearer's face. And it would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the material of the sheet being semi-rigid, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416. In regard to claim 13, Kokuni shows positioning a template on a person's face (fig. 2) such that an upper edge of the template being positioned on the person's forehead, a lower edge of the template being positioned on the person's cheekbones, a right edge of the template being positioned on the person's right temple and a left edge of the template being positioned on the person's left temple; the template also having right and left eye holes (3). As discussed above, Kukuni in view of Chateau and Boll et al shows a horizontal marking and a vertical marking, therefore, Kokuni inherently shows horizontally aligning the horizontal marking of the template with the person's nose and vertically aligning the vertical marking of the template with the person's eyes and ears. Kokuni also discloses a step of applying a simulated eyebrow (6, fig. 2) within right and left eyebrow slots (4)

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formed in the template above the right and left eye holes. In regard to claim 15, Kokuni discloses using an eyebrow pencil (fig. 2) to draw eyebrows with the right and left eyebrow slots. In regard to claims 16-17, Kokuni discloses the template being positioned on a person's face by using a strap (5, page 2, paragraph 12 of the attached translation). In regard to claim 18, as discussed above in claim 1, Kokuni discloses an eyebrow template comprising all the claimed limitations as discussed above in claim 1; Kokuni in view of Boll et al do not show a plurality of templates and each having a size that differs relative to one another and a first marking extending from the upper edge to the cutout portion at a substantially midpoint of the sheet, a second marking extending from the right eyebrow slot to the left eyebrow slot. Chateau as discussed above shows a first and second markings, Chateau further discloses a kit of eyebrow stencils comprising a plurality of eyebrow templates and each having a size that differs relative to one another (col. 3, lines 70-74). It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the markings as taught by Chateau into the eyebrow template of Kokuni in view of Boll et al for the purpose of centering the template to facilitate symmetrical application of the eyebrow makeup and the way of providing a plurality of eyebrows templates and each having a size that differs relative to one another as taught by Chateau into the device of Kokuni in view of Boll et al in order to provide the user with multiple selections of templates.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kokuni in view of Chateau and Boll et al as applied to claim 1 above, and further in view of Hirzel (IDS cited reference).

With regard to claim 9, Kokuni in view of Chateau and Boll et al disclose an eyebrow template comprising all the claimed limitations in claims 1, 7-8 as discussed above except for the connecting element having a hole formed adjacent each of the right and left edges of the sheet. Hirzel discloses an eyebrow template (fig. 2) comprising a sheet of material (10) having a right (at 75, fig. 1) and left edges, a fastening element (24) and a connecting element having a hole (18, fig. 1) formed adjacent to each of the right and left edges for effective receive the fastening element. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the connecting hole as taught by Hirzel into the eyebrow template of Kokuni in view of Chateau and Boll et al in order to interchange a variety of fastening elements.

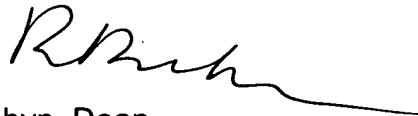
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robyn Doan whose telephone number is (571) 272-4711. The examiner can normally be reached on Mon-Fri 8:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached on (571) 272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Robyn Doan
Examiner
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